Proposed Amendments to the

Rules of Appellate Procedure
Rules of Civil Procedure
Code of Judicial Administration
Rules of Juvenile Procedure

These rules are published for comment.
The comment period ends November 15, 2002.

Submit written comments to:
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Rules marked with ** have been approved and are effective during the comment period pursuant to CJA 2-205 or 11-101 but are subject to further amendment as a result of comments. All other amendments are proposed and, if approved, will be effective upon publication approximately April 1, 2003 .

Rules of Appellate Procedure

Rule 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(2) A table of contents, including the contents of the addendum, with page references.

(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(4) A brief statement showing the jurisdiction of the appellate court.

(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(A) citation to the record showing that the issue was preserved in the trial court; or

(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding.

(10) A short conclusion stating the precise relief sought.

(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraph (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person,' "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rule 26, unless the parties otherwise agree or the court otherwise orders. The brief of the appellant shall not exceed 50 pages in length. The brief of the appellee/cross-appellant shall contain the issues and arguments involved in the cross-appeal as well as the answer to the brief of the appellant and shall not exceed 50 pages in length. The appellant shall then file a brief which contains an answer to the original issues raised by the appellee/cross-appellant and a reply to the appellee's response to the issues raised in the appellant's opening brief. The appellant's second brief shall not exceed 25 pages in length. The appellee/cross-appellant may then file a second brief, not to exceed 25 pages in length, which contains only a reply to the appellant's answers to the original

issues raised by the appellee/cross-appellant's first brief. The lengths specified by this rule are exclusive of table of contents, table of authorities, and addenda and may be exceeded only by permission of the court. The court shall grant reasonable requests, for good cause shown.

(h) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(i) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made within 7 days of filing and shall be similarly limited.

(j) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

~~(k) Brief covers. The covers of all briefs shall be of heavy cover stock and shall comply with Rule 27.~~

Rules of Civil Procedure

Rule 1. General provisions.

(a) Scope of rules. These rules shall govern the procedure in the courts of the state of Utah in all actions, suits, and proceedings of a civil nature, whether cognizable at law or in equity, and in all special statutory proceedings, except as governed by other rules promulgated by this court or enacted by the Legislature and except as stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every action.

(b) Effective date. These rules shall take effect on January 1, 1950; and thereafter all laws in conflict therewith shall be of no further force or effect. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) Electronic filing. Notwithstanding these rules, the court may permit electronic transactions among the parties and with the court in court-supervised pilot projects approved by the Judicial Council.

Rule 47. Jurors.

(a) Examination of jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional

questions of the parties or their attorneys as is material and proper. Prior to examining the jurors, the court may make a preliminary statement of the case. The court may permit the parties or their attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

(b) Alternate jurors. The court may direct that alternate jurors be impaneled. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be selected at the same time and in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, and privileges as principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict unless the parties stipulate otherwise and the court approves the stipulation. The court may withhold from the jurors the identity of the alternate jurors until the jurors begin deliberations. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed. (c) Challenge defined; by whom made. A challenge is an objection made to the trial jurors and may be directed (1) to the panel or (2) to an individual juror. Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made.

(d) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury, or on the intentional omission of the proper officer to summon one or more of the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on the record, and must specifically set forth the facts constituting the ground of challenge. If the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

(e) Challenges to individual jurors; number of peremptory challenges. The challenges to individual jurors are either peremptory or for cause. Each party shall be entitled to three peremptory challenges, except as provided under Subdivisions (b) and (c) of this rule.

(f) Challenges for cause. A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(1) A want of any of the qualifications prescribed by law to render a person competent as a juror.

(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a corporation that is a party.

(3) Standing in the relation of debtor and creditor, guardian and ward, master and servant, employer and employee or principal and agent, to either party, or united in business with either party, or being on any bond or obligation for either party; provided, that the relationship of debtor and creditor shall be deemed not to exist between a municipality and a resident thereof indebted to such municipality by reason of a tax, license fee, or service charge for water, power, light or other services rendered to such resident.

(4) Having served as a juror, or having been a witness, on a previous trial between the same parties for the same cause of action, or being then a witness therein.

(5) Pecuniary interest on the part of the juror in the result of the action, or in the main question involved in the action, except interest as a member or citizen of a municipal corporation.

(6) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

(g) Selection of jury. The judge shall determine the method of selecting the jury and notify the parties at a pretrial conference or otherwise prior to trial. The following methods for selection are not exclusive.

(1) Strike and replace method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted, and for all challenges for cause that may be granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy , and any such new juror may be challenged for cause. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(2) Struck method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted and for all challenges for cause that may be granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(3) In courts using lists of prospective jurors generated in random order by computer, the clerk may call the jurors in that random order.

(h) Oath of jury. As soon as the jury is completed an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between the parties, and a true verdict rendered according to the evidence and the instructions of the court.

(i) Proceedings when juror discharged. If, after impaneling the jury and before verdict, a juror becomes unable or disqualified to perform the duties of a juror and there is no alternate juror, the parties may agree to proceed with the other jurors, or to swear a new juror and

commence the trial anew. If the parties do not so agree the court shall discharge the jury and the case shall be tried with a new jury.

(j) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.[1]

~~(j)~~(k) View by jury. When in the opinion of the court it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial.

~~(k)~~ (l) Separation of jury. If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

~~(l)~~(m) Deliberation of jury. When the case is finally submitted to the jury they may decide in court or retire for deliberation. If they retire they must be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Unless by order of the court, the officer having charge of them must not make or allow to be made any communication to them with respect to the action, except to ask them if they have agreed upon their verdict, and the officer must not, before the verdict is rendered, communicate to any person the state of deliberations or the verdict agreed upon.

~~(m)~~(n) Exhibits taken by jury; notes. Upon retiring for deliberation the jury may take with them the instructions of the court and all exhibits which have been received as evidence in the cause, except exhibits that should not, in the opinion of the court, be in the possession of the jury,

[1] Advisory Committee Note. The committee intends neither to encourage nor to discourage the practice of inviting jurors to submit written questions of witnesses, but only to regulate and make uniform the procedure by which it occurs should the judge exercise discretion in favor of the practice. In exercising that discretion, the committee encourages the judge to discuss the matter beforehand, at the pretrial conference if possible, and consider points in favor of or opposed to the practice. In instructing the jurors and to promote restraint among them, the committee encourages the judge to remind jurors that lawyers are trained to elicit the evidence necessary to decide the case.

such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

~~(n)~~(o) Additional instructions of jury. After the jury have retired for deliberation, if there is a disagreement among them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court the information required must be given in the presence of, or after notice to, the parties or counsel. Such information must be given in writing or stated on the record.

~~(o)~~(p) New trial when no verdict given. If a jury is discharged or prevented from giving a verdict for any reason, the action shall be tried anew.

~~(p)~~(q) Court deemed in session pending verdict; verdict may be sealed. While the jury is absent the court may be adjourned from time to time in respect to other business, but it shall be open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day.

~~(q)~~(r) Declaration of verdict. When the jury or three-fourths of them, or such other number as may have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which shall be done by the court or clerk asking each juror if it is the juror's verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing therewith, the jury must be sent out again; otherwise the verdict is complete and the jury shall be discharged from the cause.

~~(r)~~(s) Correction of verdict. If the verdict rendered is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

Code of Judicial Administration

Rule 2-203. Forty-five day comment period.

Intent:

To establish a procedure for public comment on proposed Council policy by the judiciary, interested groups, and members of the public.

To assure that the policy decisions of the Council receive the widest practicable exposure to comment and criticism prior to final adoption of a rule.

To assure that persons and groups affected by Council decisions have the opportunity to participate in that decision.

To adopt procedures consistent with the philosophy of the Utah Administrative Rulemaking Act.

Applicability:

This rule shall apply to all rules initiated and promulgated by the Council.

Statement of the Rule:

(1) Unless a rule is promulgated pursuant to Rule 2-205, the Council shall, prior to final action on any rule:

(A) ~~distribute a copy~~ email notice of the proposed rule and an invitation for comment to the governor, the chairperson of the Judicial Rules Review Committee, the director of the Office of Legislative Research and General Counsel, the Boards, the Executive Director of the Commission on Criminal and Juvenile Justice, the chair of each of the Utah Supreme Court's Advisory Committees on Rules of Procedure, Evidence, and Professional Conduct, the Executive Director of the Utah State Bar, the proponent of the rule, and any other person or agency identified by the Council as requiring notice. The notice shall include a summary of the proposed changes and identify the URL where the full text of proposed rules is available;

(B) publish the proposed rule and an invitation for comment in a regularly published law reporter service;

(C) ~~mail~~ email notice of proposed changes to each active member of the Utah State Bar. The notice shall include a summary of the proposed changes and identify the URL where the full text of proposed rules is available.

(D) allow at least 45 days between publication and final action on the rule; and

(E) consider all comments submitted.

(2) The Council has the discretion to limit public comment to oral or written comment. Prior to taking final action on a rule, the Council may distribute the rule for further public comment after the initial comment period has expired.

(3) Substantive amendments to existing rules shall be distributed by the Council for public comment in accordance with paragraph (1) of this rule.

***If adopted, amendments to this rule will be effective July 1, 2003.*

Rule 3-306. Court Interpreters.

Intent:

To declare the policy of the Utah State Courts to secure the rights of persons who are unable to understand or communicate adequately in the English language when they are involved in legal proceedings.

To outline the procedure for certification, appointment, and payment of court interpreters.

To provide certified interpreters in all cases in those languages for which certification programs have been established.

Applicability:

This rule shall apply to legal proceedings in the courts of record and not of record. This rule shall apply to interpretation for non-English speaking persons and not to interpretation for the hearing impaired.

Statement of the Rule:

(1) Definitions.

(A) "Appointing authority" means a trial judge, administrative hearing officer, or other officer authorized by law to conduct judicial or quasi-judicial proceedings, or a delegate thereof.

(B) AApproved interpreter@ means an non-certified interpreter who has fulfilled requirements established by the advisory panel.

(C) "Certified interpreter" means a person who has fulfilled the requirements set forth in subsection 4.

(D) "Conditionally-approved interpreter" means a non-certified interpreter who has completed an application form and, after responding to questions about background, education

and experience pursuant to subsection (6)(C), has received conditional approval from the appointing authority.

(E) "Code of Professional Responsibility" means the Code of Professional Responsibility for Court Interpreters set forth in Appendix H.

(F) "Legal proceeding" means a civil, criminal, domestic relations, juvenile, traffic or administrative proceeding. Legal proceeding does not include a conference between the non-English speaking person and the interpreter that occurs outside the courtroom, hearing room, or chambers unless ordered by the appointing authority. In juvenile court legal proceeding includes the intake stage.

(G) "Non-English speaking person" means any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.

(H) "Principal party in interest" means a person involved in a legal proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.

(I) "Witness" means anyone who testifies in any legal proceeding.

(2) Advisory panel. Policies concerning court interpreters shall be developed by a court interpreter advisory panel, appointed by the council, comprised of judges, court staff, lawyers, court interpreters, and experts in the field of linguistics.

(3) Minimum performance standards. All certified and approved interpreters serving in the court shall comply with the Code of Professional Responsibility.

(4) Certification.

(A) Subject to the availability of funding, and in consultation with the advisory panel, the administrative office shall establish programs to certify court interpreters in the non-English languages most frequently needed in the courts. The administrative office shall:

(i) designate languages for certification;

(ii) establish procedures for training and testing to certify and recertify interpreters; and

(iii) establish, maintain, and issue to all courts in the state a current directory of certified interpreters.

(B) To become certified an interpreter shall:

(i) prior to participation in the training program, pay a fee established by the Judicial Council to the administrative office to offset the costs of training and testing;

(ii) complete training as required by the administrative office;

(iii) obtain a passing score on the court interpreter's test(s) as required by the administrative office;

(iv) not have been convicted of a crime of moral turpitude; and

(v) have complied with the Code of Professional Responsibility if the interpreter has previously provided interpreting services to the Utah courts.

(C) An interpreter may be certified upon submission of satisfactory proof to the advisory panel that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section.

(5) Recertification.

(A) Subject to the availability of funding, the administrative office shall establish continuing educational requirements for maintenance of certified status.

(B) To maintain certified status, a certified interpreter shall:

(i) comply with continuing educational requirements as established by the administrative office; and

(ii) comply with the Code of Professional Responsibility.

(6) Appointment.

(A) Certified interpreters. When an interpreter is requested or when the appointing authority determines that a principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed except under those circumstances specified in subsection (6)(B), (C), or (D).

(B) Approved interpreters.

(i) Standards for appointment. An approved interpreter may be appointed only under the following circumstances:

(a) if there is no certification program established under subparagraph (4) for interpreters in the language for which an interpreter is needed,

(b) if there is a certification program established under subsection (4), but no certified interpreter is reasonably available, or

(c) for juvenile probation conferences, if the probation officer does not speak a language understood by the juvenile.

(ii) Court employees may serve as approved interpreters, but their service shall be limited to short hearings that do not take them away from their regular duties for extended periods.

(iii) The administrative office shall keep a list of all approved interpreters pursuant to subsection (6)(B) unless the interpreter is excluded from the list under subsection (10).

(C) Conditionally-approved interpreters.

(i) Standards for appointment. A conditionally-approved interpreter may be appointed only under the following circumstances:

(a) if there is no certification program established under subparagraph (4) for interpreters in the language for which an interpreter is needed and no approved interpreter is reasonably available,

(b) if there is a certification program established under subsection (4), but no certified or approved interpreter is reasonably available, or

(c) for juvenile probation conferences, if the probation officer does not speak a language understood by the juvenile.

(ii) Procedure for appointment. Before appointing a conditionally-approved interpreter, the appointing authority shall:

(a) evaluate the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence to the accused person involved,

(b) ask questions as to the following matters in an effort to determine whether the interpreter has a minimum level of qualification:

(1) whether the prospective interpreter appears to have adequate language skills, knowledge of interpreting techniques and familiarity with interpreting in a court or administrative hearing setting; and

(2) whether the prospective interpreter has read, understands, and agrees to comply with the code of professional responsibility for court interpreters set forth in appendix H.

(iii) The procedure to conditionally approve a non-certified interpreter must occur every time the interpreter is used.

(iv) Court employees may serve as conditionally-approved interpreters, but their service shall be limited to short hearings that do not take them away from their regular duties for extended periods.

(D) Other interpreters. An interpreter who is neither certified, approved nor conditionally-approved may be appointed when a certified, approved or conditionally-approved interpreter is not reasonably available, or the court determines that the gravity of the case and potential penalty to the accused person involved are so minor that delays attendant to obtaining a certified, approved, or conditionally-approved interpreter are not justified.

(7) Waiver.

(A) A non-English speaking person may at any point in the proceeding waive the right to the services of an interpreter, but only when:

(i) the waiver is approved by the appointing authority after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver;

(ii) the appointing authority determines on the record that the waiver has been made knowingly, intelligently, and voluntarily; and

(iii) the non-English speaking person has been afforded the opportunity to consult with his or her attorney.

(B) At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter.

(8) Oath. All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the Code of Professional Responsibility.

(9) Removal in individual cases. Any of the following actions shall be good cause for a judge to remove an interpreter in an individual case:

(A) being unable to interpret adequately, including where the interpreter self-reports such inability;

(B) knowingly and willfully making false interpretation while serving in an official capacity;

(C) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(D) failing to follow other standards prescribed by law and the Code of Professional Responsibility; and

(E) failing to appear as scheduled without good cause.

(10) Removal from certified or approved list.

Any of the following actions shall be good cause for a court interpreter to be removed from the certified list maintained under subsection (4)(A)(iii) or from the approved list maintained under subsection (6)(B)(iii):

(A) knowingly and willfully making false interpretation while serving in an official capacity;

(B) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(C) failing to follow other standards prescribed by law and the Code of Professional Responsibility; and

(D) failing to appear as scheduled without good cause.

(11) Discipline

(A) An interpreter may be disciplined for violating the Code of Professional Responsibility. Discipline may include decertification, suspension, probation or other restrictions on the

interpreter=s certification or qualification. Discipline by the advisory panel does not preclude independent action by the Administrative Office of the Courts.

(B) Any person, including members of the advisory panel, may initiate a complaint. Upon receipt of a complaint, the advisory panel shall provide written notice of the allegations to the interpreter. Within 20 days after the notice is mailed, the interpreter shall submit a written response to the complaint. The response shall be sent to the administrative office staff assigned to the advisory panel.

(C) Upon receipt of the interpreter=s response, staff shall attempt to informally resolve the complaint. Informal resolution may include stipulated discipline or dismissal of the complaint if staff determines that the complaint is without merit.

(D)(i) A hearing shall be held on the complaint if informal resolution is unsuccessful, or if the advisory panel otherwise determines that a hearing is necessary.

(ii) The hearing shall be held no later than 45 days after notice of the complaint was sent to the interpreter. The advisory panel shall serve the interpreter with notice of the date and time of the hearing, via certified mail, return receipt requested.

(iii) The hearing shall be closed to the public. The interpreter may be represented by counsel and shall be permitted to testify, present evidence and comment on the allegations. The advisory panel may ask questions of the interpreter and witnesses. Testimony shall be under oath and a record of the proceedings maintained. The interpreter may obtain a copy of the record upon payment of any required fee.

(E) The advisory panel shall issue a written decision within 10 days from the conclusion of the hearing. The decision shall be supported by written findings and shall be served on the interpreter via first-class mail.

(F) The interpreter may appeal the advisory panel=s decision to the Judicial Council. The interpreter shall file the notice of appeal with the Judicial Council no later than 20 days after the advisory panel=s decision is mailed to the interpreter. The notice of appeal shall include the interpreter=s written objections to the decision. The Judicial Council shall review the record of the advisory panel proceedings to determine whether the advisory panel correctly applied procedures and sanctions, and to determine whether the advisory panel abused its discretion. The interpreter and advisory panel members are not entitled to attend the Council meeting at which the proceeding is reviewed.

(12) Payment.

(A) Courts of Record.

(i) In courts of record, the administrative office shall pay interpreter fees and expenses

(a) in criminal cases,

(b) in juvenile court cases brought by the state,

(c) in cases filed against the state pursuant to U.R.C.P. 65B(b) or 65C,

(d) in cases filed under the Cohabitant Abuse Act,

(e) in other cases in which the court determines that the state is obligated to pay for an interpreter's services, and

(f) for translation of forms pursuant to paragraph (13).

(ii) In all other civil cases and small claims cases, the party engaging the services of the interpreter shall pay the interpreter fees and expenses.

(iii) Fees. Certified court interpreters shall be paid ~~$30~~ $35 per hour. Approved interpreters in languages for which there is no certification program shall be paid ~~$25~~ $30 per hour. Approved

interpreters in languages for which there is a certification program shall be paid ~~$20~~ $25 per hour. Conditionally-approved interpreters in languages for which there is no certification program shall be paid ~~$20.00~~ $25 per hour. Conditionally-approved interpreters in languages for which there is a certification program shall be paid ~~$15.00~~ $20 per hour. All other interpreters shall not be paid. Payment to interpreters shall be made in accordance with the Courts Accounting Manual. This section does not apply to court employees acting as interpreters.

(iv) Expenses. Mileage for interpreters will be paid at the same rate as state employees for each mile necessarily traveled in excess of 25 miles one-way. Per diem expenses will be paid at the same rate as state employees.

(v) Procedure for payment. The administrative office shall pay fees and expenses of the interpreter upon receipt of a certification of appearance signed by the clerk of the court or other authorized person. The certification shall include the name, address and social security number of the interpreter, the case number, the dates of appearance, the language interpreted, and an itemized statement of the amounts to be paid.

(B) Courts not of record.

(i) In courts not of record, the local government that funds the court not of record shall pay interpreter fees and expenses in criminal cases in which the defendant is determined to be indigent.

(ii) In small claims cases, the party engaging the services of the interpreter shall pay the interpreter fees and expenses.

(iii) Fees. The local government that funds the court not of record shall establish the amount of the interpreter fees.

(iv) Expenses. The local government that funds the court not of record shall establish interpreter expenses, if any, that will be paid.

(v) Procedure for payment. The local government that funds the court shall pay the interpreter upon receipt of a certification of appearance signed by the clerk of the court. The certification shall include the name, address and social security number of the interpreter, the case number, the dates of appearance, the language interpreted, and an itemized statement of the amounts to be paid.

(13) Translation of court forms. Requests for translation of court forms from English to another language shall be submitted to the advisory panel. The advisory panel shall determine whether the form shall be translated, reviewing such factors as a) whether the English form has been approved by the Judicial Council or the Supreme Court or is in common use throughout the state, and b) whether an approved translation of the form has already been done. Forms determined by the advisory panel to be appropriate for translation shall be submitted by the advisory panel to a team consisting of at least two translators. In languages for which there is a certification program, translators must be certified interpreters, preferably with some translating experience. In languages for which there is no certification program, translators may be qualified interpreters with extensive court interpreting experience, and preferably with some translating experience, or a professional translation service chosen by the advisory panel. After translation, the administrative office shall distribute the translated documents to the courts statewide.

*** Pursuant to Rule 2-205, amendment approved effective August 16, 2002, subject to further changes as a result of comments received.*

Rule 3-414. Court security.

Intent:

To promote the safety and well being of judicial personnel, members of the bar and citizens utilizing the courts.

To establish uniform policies for court security.

To delineate responsibility for security measures by the Council, the administrative office, local judges, court executives, and law enforcement agencies.

Applicability:

This rule shall apply to all courts.

Section (8) on weapons shall not apply to trial exhibits.

Statement of the Rule:

(1) Definitions.

(A) Court security. Court security includes the procedures, technology, and architectural features needed to ensure the safety and protection of individuals within the courthouse and the integrity of the judicial process. Court security is the joint effort of law enforcement and the judiciary to prevent or control such problems as verbal abuse, insult, disorderly conduct, physical violence, demonstrations, theft, fire, bomb threats, sabotage, prisoner escapes, kidnappings, assassinations, and hostage situations.

(B) Presiding judge. As used in this rule, presiding judge includes the judge of a single-judge courthouse. The presiding judge may delegate the responsibilities of this rule to another judge.

(2) Responsibilities of the Council.

(A) The Council shall ensure that all design plans for renovation or new construction of court facilities are reviewed for compliance with security standards.

(B) The Council shall promulgate general security guidelines to assist local jurisdictions in the development of court security plans. These guidelines and local security plans may supplement but shall not conflict with the following minimum requirements. If a facility fails to conform to the following requirements, the security plan for the courthouse shall note the deficiency, and the presiding judge and court executive shall use reasonable efforts to obtain funding for necessary modifications.

(i) All persons in custody shall be kept in a holding cell, restrained by restraining devices, or supervised at all times while in court unless otherwise specifically ordered by the judge in whose courtroom the individual appears.

(ii) Reserve parking near the entrance to the court facility shall be provided for court officials. Reserved parking shall not be identified by the name or title of the individual assigned to the space.

(iii) Building entrances, restrooms, holding cells and pedestrian circulation for law enforcement personnel transporting individuals in custody shall be separate from the general public and court officials. Building entrances, restrooms, offices and pedestrian circulation for court officials shall be separate from the general public. Access to non-public areas shall be controlled.

(iv) Holding cells shall be adjacent to courtrooms.

(v) Courtroom windows shall be draped or otherwise treated to restrict vision from outside the courtroom and securely fastened.

(vi) Physical barriers shall be provided between the public seating area of the courtroom and the participants' area.

(vii) Weapons and miscellaneous items which can be used as weapons shall be regulated as provided in this rule.

(viii) An emergency power system shall be provided for lighting and electrically operated doors.

(ix) Separate waiting areas shall be provided for defense witnesses, plaintiff or prosecution witnesses, and jurors.

~~(x) Lockers shall be provided for the storage of weapons legally carried but not permitted in the courthouse.~~

~~(xi)~~ (x) The bailiff shall maintain a clear line of sight of all courtroom participants and shall be between individuals who are in custody and courtroom exits.

(C) As a condition for the certification of a new justice court or the continued certification of an existing justice court pursuant to Section 78-5-139, the justice court shall file an acceptable local security plan with the statewide security coordinator and shall file amendments to the plan with the statewide security coordinator as amendments are made. The local security plan shall provide for the presence of a law enforcement officer or constable in court during court sessions or a reasonable response time by the local law enforcement agency upon call of the court.

(3) Responsibilities of the Administrative Office.

(A) The state court administrator shall appoint a statewide security coordinator who shall:

(i) review, approve and keep on file copies of all local security plans; and

(ii) periodically visit the various court jurisdictions to offer assistance in the development or implementation of local security plans.

(B) The state court administrator shall appoint a court executive in each judicial district to serve as a local security coordinator.

(C) The director of human resources shall maintain as part of each official personnel file information on each employee of the judiciary and his or her family necessary to ensure that adequate information is available to law enforcement agencies to respond to an emergency.

(4) Responsibilities of the court executive.

(A) The court executive designated as the local security coordinator shall:

(i) in consultation with the law enforcement administrator responsible for security and with the judges responsible for the security plan, develop and implement a local security plan for each court of record facility within the district;

(ii) annually review the local security plan with the presiding judge and the law enforcement administrator to identify deficiencies in the plan and problems with implementation;

(iii) file an acceptable local security plan with the statewide security coordinator; and

(iv) file amendments to the plan with the statewide security coordinator as amendments are made.

(B) The local security plan for a courthouse and any amendments to it shall be approved by a majority of the judges of the district of any court level occupying the courthouse. Voting shall be without regard to court level. As used in this subsection the term Ajudges of the district of any court level occupying the courthouse@ shall include all judges of the district court of the district and all judges of the juvenile court of the district regardless of whether a particular judge occupies the courthouse so long as at least one judge of that court level occupies the courthouse. The term also includes the justices of the Supreme Court, the judges of the Court of Appeals and any justice court judge who actually occupy the courthouse.

(C) The court executive shall conduct an annual survey of all court facilities to identify steps necessary to meet security guidelines established by the Council.

(D) The court executive shall provide a copy of the current local security plan and annual training on the plan to all employees, volunteers and security personnel.

(E) The local plan shall clearly delineate the responsibilities between court personnel and law enforcement personnel for all areas and activities in and about the courthouse.

(F) The court clerk or probation officer, under the supervision of the court executive, shall provide timely notice to transportation officers of required court appearances and cancellation of appearances for individuals in custody. The court shall consolidate scheduled appearances whenever practicable and otherwise cooperate with transportation officers to avoid unnecessary court appearances.

(G) To the extent possible, the clerk of the court shall establish certain days of the week and times of day for court appearances of persons in custody in order to permit transportation officers reasonable preparation and planning time. The court shall give priority to cases in which a person in custody appears in order to prevent increased security risks resulting from lengthy waiting periods.

(5) Responsibilities of law enforcement agencies.

(A) The law enforcement agency with responsibility for security of the courthouse, through a law enforcement administrator, shall:

(i) coordinate all law enforcement activities within the courthouse necessary for implementation of the security plan and for response to emergencies;

(ii) cooperate with the court executive in the development and implementation of a local security plan;

(iii) provide local law enforcement personnel with training as provided in this rule;

(iv) appoint court bailiffs; and

(v) provide building and perimeter security.

(B) The law enforcement agency responsible for court security shall be as follows:

(i) The Department of Public Safety for the Supreme Court and the Court of Appeals when they are in session in Salt Lake County. When convening outside of Salt Lake County, security shall be provided by the county sheriff. The Department of Public Safety may call upon the Salt Lake County Sheriff for additional assistance as necessary when the appellate courts are convening in Salt Lake County.

(ii) The county sheriff for district courts and juvenile courts within the county.

(iii) The county sheriff for a county justice court and the municipal police for a municipal justice court. The county or municipality may appoint a constable to provide security services to the justice court. If a municipality has no police department or constable, then the law enforcement agency with which the municipality contracts shall provide security services to the justice court.

(6) Court bailiffs.

(A) Qualifications. Bailiffs shall be Alaw enforcement officers@ as defined in Section 53-10-103. At the discretion of the law enforcement administrator and with the consent of the presiding judge, bailiffs may be Aspecial function officers@ as defined by Section 53-10-105.

(B) Training. Prior to exercising the authority of their office, bailiffs shall satisfactorily complete the basic course at a certified peace officer training academy or pass a waiver examination and be certified. Bailiffs shall complete 40 hours of annual training as established

by the Division of Peace Officer Standards and Training. Bailiffs shall receive annual training on the elements of the court security plan, emergency medical assistance and the use of firearms.

(C) Physical and mental condition. Court bailiffs shall be of suitable physical and mental condition to ensure that they are capable of providing a high level of security for the court and to ensure the safety and welfare of individuals participating in court proceedings. Bailiffs shall be capable of responding appropriately to any potential or actual breach of security.

(D) Appointment. The appointment of a bailiff is subject to the concurrence of the presiding judge.

(E) Supervision. The court bailiff shall be supervised by the appointing authority and perform duties in compliance with directives of the appointing authority.

(F) Responsibilities. Court bailiff responsibilities shall include but are not limited to the following.

(i) The bailiff shall prevent persons in custody from having physical contact with anyone other than the members of the defense counsel=s team. Visitation shall be in accordance with jail and prison policies and be restricted to those facilities.

(ii) The bailiff shall observe all persons entering the courtroom, their movement and their activities. The bailiff shall control access to the bench and other restricted areas.

(iii) The bailiff shall search the interior of the courtroom and restricted areas prior to the arrival of any other court participants. Similar searches shall be conducted following recesses to ensure the room is clear of weapons, explosives, or contraband.

(iv) Bailiffs shall wear the official uniform of the law enforcement agency by whom they are employed.

(v) Bailiffs shall comply with the directives of the judge or commissioner with respect to security related activities and shall perform other duties incidental to the efficient functioning of the court which do not detract from security functions. Activities wholly unrelated to security or function of the court, including personal errands, shall not be requested nor performed.

(vi) Bailiffs shall perform responsibilities provided for in the local court security plan.

~~(7) Secure areas. Pursuant to Section 78-7-6, the following areas of all courthouses of courts of record and not of record are designated as Asecure areas@:~~

~~(a) judges= and court commissioners= chambers;~~

~~(b) courtroom areas inside well;~~

~~(c) employees= and volunteers= offices;~~

~~(d) private hallways, stair wells and elevators;~~

~~(e) jury deliberation rooms;~~

~~(f) jury assembly rooms;~~

~~(g) holding cells;~~

~~(h) victim and witness rooms;~~

~~(i) attorney conference rooms;~~

~~(j) reserved parking areas;~~

~~(k) breakrooms;~~

~~(l) conference rooms; and~~

~~(m) libraries not open to the public.~~

~~(8)~~ (7) Weapons.

(A) Weapons generally.

(i) A courthouse is presumed to be free of all weapons and firearms unless a local security plan provides otherwise in accordance with this rule. No person may possess an explosive device in a courthouse ~~or a secure area of a courthouse~~. Except as permitted by this rule, no person may possess a firearm, ammunition, or dangerous weapon in a courthouse ~~or a secure area of a courthouse~~.

(ii) All firearms permitted under this rule and a local security plan:

(a) and carried upon the person shall be concealed unless worn as part of a public law enforcement agency uniform;

(b) shall remain in the physical possession of the person authorized to possess it and shall not be placed in a drawer, cabinet, briefcase or purse unless the person has physical possession of the briefcase or purse or immediate control of the drawer or cabinet or the drawer or cabinet is locked; and

(c) shall be secured in a holster with a restraining device.

(B) Persons authorized to possess a firearm or other weapon.

(i) The following officers may possess a firearm and ammunition in a courthouse ~~or a secure area of a courthouse~~ if the firearm is issued by or approved by the officer=s appointing authority and if possession is required or permitted by the officer=s appointing authority and the local security plan:

(a) Alaw enforcement officer@ as defined in Section 53-10-103;

(b) Acorrectional officer@ as defined in Section 53-10-104;

(c) Aspecial function officer@ as defined in Section 53-10-105; and

(d) Afederal officer@ as defined in Section 53-10-106.

(ii) A judge or law enforcement official as defined in Section 53-5-711 may possess in a courthouse ~~or a secure area of a courthouse~~ a firearm and ammunition for which the judge or law enforcement official has a valid certificate of qualification issued under Section 53-5-711 if possession is permitted by the local security plan.

(iii) A court commissioner may possess in a courthouse ~~or a secure area of a courthouse~~ a firearm and ammunition for which the court commissioner has a concealed weapons permit, but only if the court commissioner has obtained the training and annual retraining necessary to qualify for a certificate issued under Section 53-5-711 and if possession is permitted by the local security plan.

(iv) A person permitted under subsections (i), (ii) or (iii) to possess a firearm nevertheless shall not possess a firearm in a courthouse ~~or a secure area of a courthouse~~ if the person is appearing at the courthouse as a party to litigation. A person possessing a firearm in a courtroom shall notify the bailiff or the judge.

(v) If permitted by the local security plan, a court employee or volunteer may possess in a courthouse ~~or a secure area of a courthouse~~ an otherwise legal personal protection device other than a firearm. An employee or volunteer shall not possess a personal protection device while appearing as a party to litigation. An employee or volunteer shall not possess a firearm while on duty.

(C) Firearm training requirements.

(i) To requalify for a certificate issued under Section 53-5-711 a judge shall annually complete with a passing score a range qualification course for judges and law enforcement officials established by the Department of Public Safety or a course established by any law

enforcement agency of the state of Utah or its political subdivision for the requalification of its officers.

(ii) The cost of firearms, ammunition, initial qualification, requalification and any other equipment, supplies or fees associated with a certificate of qualification issued under Section 53-5-711 shall be the responsibility of the judge or court commissioner and shall not be paid from state funds.

~~(9)~~ (8) Security devices and procedures.

(A) Metal detectors. The use of metal detectors or other screening devices should be at the discretion of the law enforcement agency responsible for security/bailiff services. Such devices shall be operated only by law enforcement agencies.

(B) Physical search. Searches of persons in or about the courthouse or courtroom shall be conducted at the discretion of the law enforcement agency responsible for security when the local law enforcement agency has reason to believe that the person to be searched is carrying a weapon or contraband into or out of the courthouse or when the court so orders. No other person is authorized to conduct such searches. Written notice of this policy shall be posted in a conspicuous place at the entrance to all court facilities.

(C) Emergency communication system. An emergency communications system should be installed in each courtroom, judge's chamber, commissioner's chamber, and clerk's office. The system should be capable of alerting the law enforcement agency responsible for security of a disturbance situation by panic button, direct telephone line, or walkie-talkie. The system should be designed to identify the exact location of the emergency and the circumstances of the emergency to ensure that law enforcement may respond in a timely manner with sufficient capability to control the situation.

(D) Extra security. In anticipated high risk situations or a highly publicized case, the law enforcement agency responsible for security should, on its own initiative or in response to an order of the court, provide extra security including additional personnel, controlled access, etc.

~~(10)~~ (9) Transportation of persons in custody.

(A) The federal, state, county or municipal agency with physical custody of a person whose appearance in court is required is responsible for transportation of that person to and from the courtroom.

(B) The transportation officer shall:

(i) remain present at all times during court appearances;

(ii) be responsible for the custody of such persons;

(iii) support the court bailiff in the preservation of peace in the courthouse and courtroom;

(iv) provide advance notice of the transportation and of any extraordinary security requirements to the law enforcement agency responsible for court security, to the judge, and to the bailiff;

(v) comply with any regulations of the county sheriff regarding the transportation of persons in custody to court; and

(iv) return the person in custody to the proper place of confinement.

(C) The law enforcement agency responsible for court security shall provide assistance to the transportation officer as circumstances dictate.

Rule 4-207. Expungement and sealing of records.

Intent:

To establish a uniform procedure for expungement of records in criminal cases.

Applicability:

This rule shall apply to the District and Justice Courts.

Statement of the Rule:

(1) Petition and order forms.

(A) The court shall accept only a petition and order for expungement on forms approved by the Council or which otherwise comply with the requirements of state law.

(B) Copies of the petition and order forms approved by the Council shall be provided by the clerk of the court at no cost to the public or members of the bar upon request.

(2) Clerical procedures.

(A) Conviction cases.

(i) Filing requirements. Petitioner shall file with the petition a certificate of eligibility issued by the Law Enforcement and Technical Services Division of the Department of Public Safety.

(ii) Evaluations. The court may request a written evaluation by the adult probation and parole section of the Department of Corrections.

(iii) Hearing. The court shall conduct a hearing on the petition, at which the petitioner and the prosecutor may call witnesses, if:

(a) the prosecutor or victim objects in writing to the petition within 30 days after service of notice of the petition for expungement;

(b) the petitioner objects to conclusions in the evaluation or certificate of eligibility; or

(c) the court determines that a hearing is necessary.

(B) Non-conviction cases. Petitioner shall file with the petition a certificate of eligibility issued by the Law Enforcement and Technical Services Division of the Department of Public Safety.

(C) Multiple files. In cases where the petitioner is seeking expungement of multiple offenses arising from a single criminal episode and the offenses were severed into more than one case file, the clerk of the court shall receive only one petition for expungement and file a copy of the petition for expungement in each case file.

(D) Assistance. The clerk of the court shall assist the petitioner or his or her attorney in retrieving the court records relating to the arrest, violation or conviction which is the subject of the petition.

(3) Fees. The petitioner shall pay fees pursuant to Utah Code Ann. Sections ~~21-1-5(1)(i)~~ 78-7-35(i)(i) and 77-18-10.

(4) Distribution of orders.

(A) The petitioner shall be responsible for distributing the order of expungement to all affected agencies and officials including the court, the arresting agency, the booking agency, the Department of Corrections, the Board of Pardons, and the Utah Bureau of Criminal Identification.

(B) The Bureau of Criminal Identification shall forward a copy of the order to the Federal Bureau of Investigation.

(C) The petitioner shall also distribute copies of the expungement order entered by the convicting court to any other court which may have conducted preliminary or subsequent proceedings in the same case.

(5) Sealing of court record. The court records of expunged cases shall be sealed in accordance with Rule 4-205.

Rule 4-405. Juror and witness fees and expenses.

Intent:

To develop a uniform procedure for payment of juror and witness expenses.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Fees.

(A) The courts shall pay the fee established by statute for all jurors of the courts of record. The courts shall pay the fee established by statute for witnesses subpoenaed by the prosecutor or by an indigent defendant in criminal cases in the courts of record and in actions in the juvenile court. The courts shall pay no fee to a witness appearing for a hearing that was canceled or postponed with at least 24 hours notice to the parties, excluding Saturdays, Sundays, and holidays. The parties shall notify witnesses when a hearing is canceled or postponed.

(B) For purposes of Section ~~21-5-4~~ 78-46-28, a subsequent day of attendance shall be:

(i) for a witness, attendance on a subsequent day of the hearing regardless of whether the hearing is continued to a contiguous business day, but only if the hearing was actually called on the first day; and

(ii) for a juror, attendance on a subsequent day during the juror's term of availability, as defined in Rule 4-404(3)(B), regardless of whether attendance is for the same trial.

(C) A witness requesting payment shall present a subpoena on which appears the certification of the attorney general, county attorney, district attorney or legal defender of the number of days the witness attended court, as defined in subsection (B).

(2) Mileage. The courts shall reimburse the cost of travel at the rate established by statute for those jurors and witnesses to whom the court pays a fee. A witness in a criminal case or juvenile court case traveling from out of state to whom the court pays a witness fee shall be reimbursed the cost of round trip airfare or round trip travel at $.20 per mile, as determined by the court.

(3) Meals and refreshments.

(A) Meals for jurors shall be provided if the case has been submitted to the jury and the jury is in the process of deliberating the verdict or if the jury is sequestered. A lunch meal may be provided to jurors impaneled to try a case if it is anticipated that the matter will not be concluded by 2:00 p.m. on the final day of trial and the trial judge finds that provision of a lunch meal will assist in expediting the conclusion of the trial.

(B) A witness in a criminal case or a juvenile court case traveling from outside the county to whom the court pays a witness fee may be reimbursed for meals.

(C) Payment for meals for jurors and eligible in-state witnesses shall not exceed the rates adopted by the Department of Administrative Services.

(D) Refreshments may be provided to a jury during the course of trial, upon order of the judge. Payment for refreshments shall not exceed $3.00 per person per day.

(4) Lodging. Lodging for jurors shall be paid if the judge orders the jury sequestered, if the juror must travel more than 100 miles one-way from the juror's residence to the courthouse and the judge orders that lodging be paid, or if the judge orders that lodging be paid due to inclement weather. A witness in a criminal case or juvenile court case to whom the court pays a witness fee traveling from outside the county shall be provided lodging only upon a determination by the court executive that returning to the point of origin on the date in question places a hardship upon the witness or that the reimbursement for travel for repeat appearances is greater than the

cost of lodging. Unless unavailable, lodging costs shall not exceed the rates adopted by the Department of Administrative Services.

(5) Method and record of payment.

(A) The payment of juror and witness fees and mileage shall be by check made payable to the individual, or the court may reimburse the county or municipal government for the payment of the fee or mileage allowance.

(B) The court shall pay eligible expenses of jurors directly to the vendor. Jurors shall not be required to incur the expense and seek reimbursement. The court may pay the eligible expenses of witnesses directly to the vendor or may reimburse the witness or the county or municipal government for the expense.

(C) Jurors. Jurors must present a summons for payment for the first day of service. The clerk shall file the summons and shall record the attendance of jurors for payment for subsequent days of service.

(ii) Witnesses in criminal cases and juvenile court cases. Witnesses in criminal cases and juvenile court cases must present a subpoena for payment. If the subpoena is issued on behalf of an indigent defendant, it shall bear the certificate of defense counsel that the witness has appeared on behalf of the defendant at state expense pursuant to Utah Code Ann. ' ~~21-5-14~~78-46-26, regardless of the number of days for which the witness is eligible for payment. If the subpoena is issued on behalf of the prosecution, the prosecutor shall certify the number of days for which the witness is eligible for payment. The clerk shall file the subpoena and record of attendance.

(D) The clerk of the court shall enter the payment due the juror or witness in the State Accounting System (FINET). The state will mail the payment to the juror or witness within 3 days. The clerk of court shall maintain both a list of undeliverable juror and witness checks and the checks. A payment is considered abandoned one year after it became payable and will be sent to the Division of Unclaimed Property pursuant to Utah Code Section 67-4a-301.

(6) Audit of records. At least once per month, the clerk of the court or a designee shall compare the jurors summoned and the witnesses subpoenaed with the FINET log of payments. Any unauthorized payment or other irregularity shall be reported to the court executive and the audit department of the Administrative Office of the Courts. The Administrative Office of the Courts shall include the audit of juror and witness payments within the scope of their regularly scheduled audits.

Rule 4-408. Locations of trial courts of record.

Intent:

To designate locations of trial courts of record.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Each county seat and the following municipalities are hereby designated as locations of trial courts of record: American Fork; Bountiful; Cedar City; Layton; Murray; Orem; Roosevelt; ~~Roy;~~ Salem; Sandy; Spanish Fork; West Valley City.

(2) The following unincorporated areas of a county are designated as locations of trial courts of record: the Silver Summit area of Summit County.

(3) Subject to limitations imposed by law, any trial court of record may hold court in any location designated by this rule.

Rule 4-608. Trials de novo of justice court proceedings in criminal cases.

Intent:

To establish uniform procedures governing trials de novo and hearings de novo of justice court adjudications.

Applicability:

This rule shall apply to district and justice courts in trials de novo and hearings de novo in which the notice of appeal is filed with the justice court.

Statement of the Rule:

(1) Right to appeal. Appeal of a judgment or order of the justice court is as provided in Utah Code Ann. Section 78-5-120.

(2) Venue. The appeal shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. Either party may move for a change of venue under the applicable Rules of Criminal Procedure.

(3) The notice of appeal. The notice of appeal must be filed within thirty days of the entry of judgment or order. Within twenty days after receipt of the notice of appeal, the justice court shall transmit to the district court a certified copy of the docket, the information or waiver of information, the judgment and sentence and other orders and papers filed in the case.

(4) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.

(5) Orders. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo or hearing de novo, ~~including posting of bail and release from custody~~ except that the justice court shall determine the application for a certificate of probable cause.

(6) Proceedings and order of the district court. The district court shall conduct anew the proceedings on which the judgment or order appealed from are based. Unless the case is remanded, the disposition of fine revenue shall be according to district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case.

(7) Remand. The district court may dismiss the appeal and remand the case to the justice court if the appellant:

(A) fails to appear,

(B) fails to take steps necessary to prosecute the appeal, or

(C) requests the appeal be dismissed.

Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court as required by Utah Code Ann. Section 78-5-120.

(8) Traffic convictions. Notwithstanding the filing of a notice of appeal, if a person is convicted of a traffic offense in justice court, the justice court shall require the person to surrender all of his or her license certificates and the justice court shall forward them with the record of conviction to the Driver License Division within ten days as provided in Utah Code Ann. Section 53-3-218.

Rule 4-903. Uniform custody evaluations.

Intent:

To establish uniform guidelines for the preparation of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

(1) Custody evaluations shall be performed by persons with the following minimum qualifications:

(A) Social ~~work evaluations shall be performed by social workers licensed by the state in which they practice.~~ workers who hold the designation of Licensed Clinical Social Worker and are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(B) ~~Psychological evaluations shall be performed by~~ Doctoral level psychologists who are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(C) Physicians who are board certified in psychiatry and are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

~~Psychiatric examinations shall be performed by a licensed physician with a specialty in psychiatry.~~

(D) Marriage and family therapists who hold the designation of Licensed Marriage and Family Therapist (Masters level minimum) by the state in which they practice may perform custody evaluations within the scope of their licensure.

(2) Every motion or stipulation for the performance of a custody evaluation shall include:

(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(C) specific factors, if any, to be addressed in the evaluation.

(3) Every order requiring the performance of a custody evaluation shall:

(A) require the parties to cooperate as requested by the evaluator;

(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject ligitation or other proceedings as deemed necessary by the court;

(C) assign responsibility for payment;

(D) specify dates for commencement and completion of the evaluation;

(E) specify factors, if any, to be addressed in the evaluation;

(F) require the evaluator to provide written notice to the court, counsel and parties within five business days of completion or termination of the evaluation and, if terminated, the reason;

(G) require counsel or parties to schedule a settlement conference with the court to include the evaluator within 45 days of notice of completion or termination unless otherwise directed by the court.

~~(2)~~ (4) In divorce cases where custody is at issue, one evaluator may be appointed by the Court to conduct an impartial and objective assessment of the parties and submit a written report to the Court. ~~shall perform the evaluation on both parties and shall submit a written report to the court, unless~~ When one of the prospective custodians resides outside of the jurisdiction of the

court. In those cases, two individual evaluators may be appointed. In cases in which two evaluators are appointed, the court will designate a primary evaluator. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria for the evaluation and shall submit only one joint report to the Court.

(3) (5) The purpose of the custody evaluation will be to provide the Court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished by assessing the prospective custodians' capacity to parent, the developmental, emotional, and physical needs of the child, and the fit between each prospective custodian and child. Unless otherwise specified in the order, Evaluators evaluators must consider and respond to each of the following factors:

(A) the child's preference;

(B) the benefit of keeping siblings together;

(C) the relative strength of the child's bond with one or both of the prospective custodians;

(D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;

(E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:

(i) moral character and emotional stability;

(ii) duration and depth of desire for custody;

(iii) ability to provide personal rather than surrogate care;

(iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;

(v) reasons for having relinquished custody in the past;

(vi) religious compatibility with the child;

(vii) kinship, including in extraordinary circumstances stepparent status;

(viii) financial condition; and

(ix) evidence of abuse of the subject child, another child, or spouse; and

(F) any other factors deemed important by the evaluator, the parties, or the court.

(6) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).

(7) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.

Rule 9-102. Caseload report requirements.

Intent:

To establish the caseload reporting requirements for Justice Courts.

Applicability:

This rule shall apply to all Justice Courts.

Statement of the Rule:

(1) Every Justice Court judge shall direct the clerk to prepare a Monthly Report of Court Caseload or complete the form personally if there is no court clerk.

(2) This report shall be submitted by the ~~20th~~ tenth day of the month following the report period.

(3) A separate form shall be prepared for each court in which a judge sits.

(4) If the court has had no cases to report during the preceding month, a form shall be submitted to document that no cases were filed or disposed of during the month.

Rules of Juvenile Procedure

*** Pursuant to Rule 11-101, amendment approved effective August 22, 2002, subject to further changes as a result of comments received.*

Rule 2. Applicability of Rules of Civil Procedure and Criminal Procedure.

(a) When the proceeding involves neglect, abuse, dependency, permanent deprivation of parental rights, adoption, status offenses or truancy, the Utah Rules of Civil Procedure shall apply unless inconsistent with these rules.

(b) When the proceeding involves an offense which would be a criminal act if committed by an adult, only the Utah Rules of Criminal Procedure which have been specifically adopted by these rules shall apply.

(c) In substantiation proceedings, the procedure set forth in U.C.A. 63-46b-15(2) shall apply.

*** Pursuant to Rule 11-101, amendment approved effective August 22, 2002, subject to further changes as a result of comments received.*

Rule 5. Definitions.

Terms in these rules have the same definitions as provided in Section 62A-7-101 and Section 78-3a-103 unless a different definition is given here. As used in these rules:

(a) "Abuse, neglect, and dependency" refers to proceedings under Section 78-3a-301 et. seq. and 78-3a-401 et. seq.

(b) "Adjudication" means a finding by the court, incorporated in a judgment or decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as "persons."

(d) "Arraignment" means the hearing at which a minor is informed of the allegations and the minor's rights, and is given an opportunity to admit or deny the allegations.

(e) "Court records" means all juvenile court legal records, all juvenile court social and probation records, and all other juvenile court records prepared, owned, received, or maintained by the court.

(f) "Disposition" means any order of the court, after adjudication, pursuant to Section 78-3a-118.

(g) "Petition" means the document containing the material facts and allegations upon which the court's jurisdiction is based.

(h) "Preliminary inquiry" means an investigation and study conducted by the probation department upon the receipt of a referral to determine whether the interests of the public or of the minor require that further action be taken.

(i) "Ungovernability" means the condition of a minor who is beyond the control of the parent/guardian, custodian or school authorities, to the extent that the minor's behavior or condition endangers the minor's own welfare or the welfare of others.

(j) "Substantiation proceedings" means juvenile court proceedings in which an individual or the Division of Child and Family Services seeks a judicial finding of a claim of substantiated, unsubstantiated or without merit with regards to inclusion or deletion of a party from the Division's Licensing Information System.

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.

(a) The issuance and execution of a warrant in delinquency cases is governed by Title 77, Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

(b) After a petition is filed, a warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court or in the petition that there is probable cause to believe that:

(1) the minor has committed an act which would be a felony if committed by an adult;

(2) the minor has failed to appear after the minor or the parent, guardian or custodian has been legally served with a summons;

(3) there is a substantial likelihood the minor will not respond to a summons;

(4) the summons cannot be served and the minor's present whereabouts are unknown;

(5) the minor seriously endangers others and immediate removal appears to be necessary for the protection of others or the public; or

(6) there are reasonable grounds to believe that the minor has run away or escaped from the minor's parent, guardian or custodian.

(c) A warrant for immediate custody of a minor may be issued if the court finds from the affidavit that the minor is under the continuing jurisdiction of the court and probable cause to believe that the minor:

(1) has left the custody of the person or agency vested by the court with legal custody and guardianship without permission; or

(2) has violated a court order.

(d) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(1) an order that the minor be taken to the detention or shelter facility designated by the court at the address specified pending a hearing or further order of the court;

(2) the name, date of birth and last known address of the minor;

(3) the reasons why the minor is being taken into custody;

(4) a time limitation on the execution of the warrant;

(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(6) the date, county and court location where the warrant is being issued.

(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances

when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

(e) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(f) A peace officer who brings a minor to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(g) This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody.

(h) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Utah Code Ann. 78-3a-112, Section 78-3a-113 and 62A-4a-202.1

(i) A warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court that there is probable cause to believe that:

(1) A child is being ill-treated by his parent, guardian, or custodian, or is being detained, ill-treated, or harbored against the desires of his parent, guardian, or custodian, in any place within the jurisdiction of the court.

(j) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(1) an order that the minor be taken to the detention or shelter facility or other location designated by the court at the address specified pending a hearing or further order of the court;

(2) the name, date of birth and last known address of the minor;

(3) the reasons why the minor is being taken into custody;

(4) a time limitation on the execution of the warrant;

(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(6) the date, county and court location where the warrant is being issued.

(7) On verbal request from a state officer, peace officer, or child welfare worker or other authorized individual a warrant for custody may be issued telephonically when it appears necessary for the protection of the the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

(k) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(l) A peace officer who brings a minor to a detention or shelter facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

Rule 17. The petition.

(a) Delinquency cases.

(1) The petition shall allege the offense as it is designated by statute or ordinance, and shall state: in concise terms, the definition of the offense together with a designation of the section or provision of law allegedly violated; the name, age and date of birth of the minor; the name and residence address of the minor's parents, guardian or custodian; the date and place of the offense; and the name or identity of the victim, if known.

(2) The petition shall be verified and may be filed by a designated intake officer or the prosecuting attorney upon information and belief on behalf of the officer or person who referred the minor.

(b) Neglect, abuse, dependency, permanent termination and ungovernability cases.

(1) The petition shall set forth in plain and concise language the jurisdictional basis as designated by statute, the facts supporting the court's jurisdiction, and the relief sought. The petition shall state: the name, age and residence of the minor; the name and residence of the minor's parent, guardian or custodian; and if the parent, guardian or custodian is unknown, the name and residence of the nearest known relative or the person or agency exercising physical or legal custody of the minor.

(2) The petition must be verified and statements made therein may be made on information and belief.

(3) A petition filed by a state human services agency shall either be prepared or approved by the office of the attorney general. When the petitioner is an employee or agent of a state agency acting in his or her official capacity, the name of the agency shall be set forth and the petitioner shall designate his or her title.

(c) Other cases.

(1) Protective orders. Petitions may be filed on forms available from the court clerk and must conform to the format and arrangement of such forms.

(2) Expungements. The petition shall state: the name, age and residence of the minor. The petition shall state the date and nature of each adjudication which the petitioner wishes to expunge. Petitions for expungement must be accompanied by an original criminal history report obtained from the Bureau of Criminal Identification and proof of service upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which an adjudication occurred prior to being filed with the Clerk of Court. Petitions for expungement must meet all of the criteria of Utah Code Ann. § 78-3a-905.

(2) Petitions in other proceedings shall conform to Utah Rule of Civil Procedure 10, except that in adoption proceedings, the petition must be accompanied by a certified copy of the Decree of Permanent Termination.

*** Pursuant to Rule 11-101, amendment approved effective August 22, 2002, subject to further changes as a result of comments received.*

Rule 18. Summons; service of process; notice.

(a) Summons. Upon the filing of a petition, the clerk, unless otherwise directed by the court, shall schedule an initial hearing in the case.

(1) Summons may be issued by the ~~prosecuting~~ petitioning attorney. If the petitioning ~~prosecuting~~ attorney does not issue a summons, summons shall be issued by the clerk in accordance with Section 78-3a-110. The summons shall conform to the format prescribed by these rules.

(2) Content of the summons.

(A) Abuse, neglect, and dependency cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall state the time within which the respondent is required to answer the petition, and shall notify the respondent that in the case of the failure to do so, judgment by

default may be rendered against the respondent. It shall also contain an abbreviated reference to the substance of the petition.

(B) Other cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall also contain an abbreviated reference to the substance of the petition. In proceedings against an adult pursuant to Section 78-3a-801, the summons shall conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

(3) The summons shall be directed to the person or persons who have physical care, control or custody of the minor and require them to appear and bring the minor before the court. If the person so summoned is not the parent, guardian or custodian of the minor, a summons shall also be issued to the parent, guardian or custodian. If the minor or person who is the subject of the petition has been emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons shall not require the appearance of the subject minor.

(4) No summons shall be necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.

(b) Service.

(1) Except as otherwise provided by these rules or by statute, service of process and proof of service shall be made by the methods provided in Utah Rule of Civil Procedure 4. Service of process shall be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party=s attorney may serve another party at a court hearing. The record of the proceeding shall reflect the service of the document and shall constitute the proof of service.

(2) Personal service may be made upon a parent, guardian or custodian and upon a minor in that person's legal custody by delivering to a parent, guardian or custodian a copy of the summons with a copy of the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service shall also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice shall be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in Utah Code Ann. §15-2-1 or upon court order shall be made in the manner provided in the Utah Rules of Civil Procedure.

(3) (A) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt.

(B) Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service shall be considered to have been legally served.

(4) In any proceeding wherein the parent, guardian or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Section 78-3a-603 and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, guardian or custodian by publication. Any rehearing shall be requested by written motion.

(5) Service shall be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service shall be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service shall be completed at least forty-five days before the adjudicatory hearing.

(c) Service by publication. Service by publication shall be authorized by the procedure and in the form provided by Utah Rule of Civil Procedure 4.

(d) Notice.

(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served.

(2) Notice for any party represented by counsel shall be given to counsel for the party.

(e) Additional parties. Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court shall conduct a hearing upon the issue of whether such person should be made a party.

ADVISORY COMMITTEE NOTE

The present law is silent on the matter of service on the minor who is the subject of a petition. This rule continues the current practice of requiring service only on the parent, guardian or custodian having legal custody.

*** Pursuant to Rule 11-101, amendment approved effective August 22, 2002, subject to further changes as a result of comments received.*

Rule 20. Discovery generally.

(a) Discovery involving adjudications of delinquency, offenses by adults against minors, and proceedings brought pursuant to Section 78-3a-602 and Section 78-3a-603 shall be conducted in accordance with Utah R. Cr. P. 16, except where limited by these rules, the Code of Judicial Administration and the Juvenile Court Act.

(b) In substantiation cases, no later than thirty days prior to trial, parties shall provide to each other information necessary to support its claims or defenses unless otherwise ordered by the court.

~~(b)~~(c) In all other cases, discovery shall be conducted pursuant to these rules unless modified by a showing of good cause and by order of the court.

*** Pursuant to Rule 11-101, amendment approved effective August 22, 2002, subject to further changes as a result of comments received.*

Rule 47. Reviews and modification of orders.

(a) Reviews.

(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the youth or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court

review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by the petitioner, if the review is a mandatory review, or by the party requesting the review to the supervising agency not less than 5 days prior to the review. Such notice shall also be given to the guardian ad litem, if one was appointed.

(2) No modification of a prior dispositional order shall be made at a report review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in open court or in writing to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the report to the guardian prior to the report review.

(b) Review hearings.

(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section 78-3a-903.

(c) Disposition reviews. Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-312, and Section 78-3a-313.

(e) In substantiation proceedings, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this Subdivision does not affect the finality of a judgment or suspend its operation.

Rule 56. Expungement.

(a) Any person adjudicated in a minor's case may petition the court for an order expunging and sealing the records pursuant to 78-3a-905.

(b) Upon filing the petition, the clerk shall calendar the matter for hearing allowing for at least 30 days notice be given to the prosecuting attorney, the Juvenile Probation Department, the agency with custody of the records, and any victim or victims representative of record on each adjudication identified by petitioner as being subject to expungement who have requested in writing notice of further proceedings. ~~The clerk shall also notify the prosecuting attorney of the scheduled hearing, notify the Juvenile Probation Department, and conduct a record check with~~

~~the Bureau of Criminal Identification.~~ The petitioner shall obtain and file with the petition verifications from local law enforcement agencies in every community in which ~~those communities where~~ the petitioner has resided during the entire time period covered in the Juvenile's record stating whether petitioner has a criminal record.

(c) If the court finds, upon hearing, that the conditions for expungement under Section 78-3a-905 have been satisfied, the court shall order the records of the case sealed as provided in Section 78-3a-905.

(d) (1) The clerk shall provide certified copies of the executed order of expungement to the petitioner and the petitioner shall deliver a copy of the order to each agency in the State of Utah identified in the order.

(2) Upon receipt of the order, all law enforcement agencies shall remove from their files and computers any information pertaining to the petitioner that was generated while the petitioner was under the age of 18 years and seal said records.

(3) The clerk shall gather in one file all of the juvenile court's legal, social, and administrative files. The file shall be sealed or securely fastened so that any attempt to open the file will be evident. The petitioner's full name, address and date of expungement shall be recorded on the file.

(4) A person whose juvenile record consists solely of nonjudicial adjustments as provided for in Section 78-3a-502 may petition the court for expungement as provided for in 78-3a-905 (6).